**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**C.R. No. 99 of 2007**

**Date of decision: 3.8.2007**

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**Chatter Singh and another** **Petitioners**

**Versus**

**Sohan Singh and another** **Respondents**

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***Coram***

**The Hon'ble Mr. Justice Deepak Gupta, Judge.**

***Whether approved for reporting?***[1]

**For the Petitioners: Mr. Rakesh Jaswal, Advocate**

**For the Respondents: None**

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**Deepak Gupta, J. (Oral)**

This petition is directed against the order dated 7.6.2007 passed by the Civil Judge (Junior Division), Court No. 2, Ghumarwin, District Bilaspur, H.P. whereby he has rejected the application under order 14 Rule 5 read with Section 151 CPC filed by the petitioner (hereinafter referred to as the defendant) for framing the following additional issue:-

> "1. Whether the gift deed made by the Jiunu Ram in favour of the plaintiff has been of ancestral, coparcenary and undivided Joint Hindu Family property or not ? ..OPD

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

The brief facts of the case are that respondent No.1 ( hereinafter referred to as the plaintiff ) filed a suit against his brother, defendant No. 1 and his mother, defendant No. 2, i.e. the present petitioners. Defendant No. 3 is just a proforma defendant in the suit. The prayer made in the suit was that the land measuring 37-1 bigha comprised in Khasra Nos. 9, 11, 13, 50, 51, 52, 89, 91, 93, 94, 110, 113, 118, 119, 121, 128, 129, 130, 132, 134, 135, Kita 21,, Khata/Khatauni No. 34/40, situated in village Bari-Bhagot, Pargana Tiun, Tehsil Ghumarwin, District Bilaspur, H.P. was the ancestral land in the hands of Jiunu, the predecessor-in-interest of the parties and, therefore, the parties are entitled to equal shares therein. The plaintiff had also prayed for a decree for declaration that if any will is produced by the defendant, the same is illegal and one of the grounds raised was that since the property was ancestral in the hands of the predecessor-in-interest, no will qua the property could have been made.

The defendant contested the suit and one of the grounds taken in paragraph 4 of the written statement is that the plaintiff had obtained gift deed qua the land measuring 6-12 bighas comprised in Khasra No. 38 and

757, Kitas 2, Khata/Khatauni Nos. 19/26 situated in village Gundalwi, Pargana Ajmerpur, Tehsil Ghumarwin, District Bilaspur, H.P. from his father Jiunu. The defendant-petitioner contends that if that property is treated to be self acquired property of Jiunu then the property in dispute should also be treated as self acquired property. It is on this basis that the aforesaid issue is sought to be framed.

In my considered view this application for framing of an additional issue is without any merit. The land in suit is totally different from the land which is the subject matter of the gift deed made in favour of the plaintiff. If the defendant has any grievance with regard to the gift deed, he can file separate appropriate proceedings in accordance with law for setting aside the same. This may be a piece of evidence which may be utilized by the defendant, but the validity of gift deed made by Jiunu in favour of the plaintiff which relates to land not the subject matter of the suit cannot be questioned in the present civil suit. It would be pertinent to mention that no counter claim in respect of the gift deed has been filed.

In view of the above discussion I find no merit in the present revision petition which is dismissed. However, it is clarified that if otherwise permissible, the petitioners can challenge the gift deed in accordance with law.

August 3, 2007(K) ( Deepak Gupta ), J.